

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

November 21, 2013 at 10:00 a.m.

1. [13-91709-E-7](#) JEFFREY/GLENDA SULLIVAN MOTION FOR RELIEF FROM
VVF-1 Brian S. Haddix AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-30-13 [[12](#)]

HONDA LEASE TRUST VS.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 30, 2013. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Honda Lease Trust seeks relief from the automatic stay with respect to an asset identified as a 2012 Honda Accord, VIN ending in 4380. The moving party has provided the Declaration of Jamie Eacho to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Eacho Declaration states that the Debtor has not made one (1) post-petition payment, with a total of \$294.96 in post-petition payments past due. From the evidence provided to the court, and only for purposes of

November 21, 2013 at 10:00 a.m.

this Motion for Relief, the debt secured by this asset is determined to be \$19,565.77, as stated in the Eacho Declaration.

The Eacho Declaration also seeks to introduce evidence establishing the value of the asset is \$15,750.00 through *N.A.D.A. Official Used Car Guide*.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the asset for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the asset is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Honda Lease Trust, and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has plead adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Honda Lease Trust, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and

successors under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Honda Accord, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

2. 13-91315-E-7 APPLEGATE JOHNSTON, INC. MOTION FOR RELIEF FROM
DMW-1 George C. Hollister AUTOMATIC STAY
 10-25-13 [251]
WESTAMERICA BANK VS.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 25, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from Automatic Stay to allow Creditor to receive and apply the specified collateral, and deny the motion as it seeks to commence state court litigation. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Collection of Accounts Receivable,
Appointment of State Court Receiver

Westamerica Bank ("Movant") moves for relief from the stay pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit it to collect pre-petition accounts receivable pledged by the Debtor to secure a loan in the original amount of \$2,000,000.00, including a relief from stay to file a State Court action to have a receiver appointed to collect the accounts receivable.

**Receipt and Application of \$91,576.85
Of Accounts Receivable Held By Trustee**

Movant also seeks relief from stay to receive and to have the Chapter 7 Trustee turnover funds in the approximate amount of \$91,576.85 that were contained in the Debtor's pre-petition account with the bank, constituting accounts receivable proceeds subject to the Movant's perfected pre-petition liens, and to disburse \$65,000.00 of those proceeds to stop Atascadero Glass with the \$65,000 constituting funds transferred at the Debtor's request for that contractor from the account described below, as well as any other accounts receivable proceeds the Debtor deposited in Central Valley Community Bank.

**Apply Account Receivables in Pre-Petition
Bank Account**

Movant also seeks relief from stay of to apply monies in a pre-petition account containing proceeds from a construction job the Debtor referred to as the Fresno Irrigation District Project, consisting of approximately \$174,000.00 to its claim.

**Assemble and Sell Equipment Not Sold
By the Trustee**

Movant also seeks relief from stay to enforce all applicable non-bankruptcy law rights and remedies with regard to any equipment, vehicles or other personal property owned by the Debtor subject to the Movant's lien, which are not sold by the Trustee through a duly-approved court auction, scheduled for October 26, 2013.

**Take Possession of and Apply Proceeds of
Equipment Sold by the Trustee**

Lastly, Movant seeks relief from the stay to take possession of the auction proceeds described above attributable to the assets the Trustee identified as subject to its lien in those assets.

Movant's Review of Forbearance Agreement

Movant entered into a forbearance agreement and security agreement with the Debtor pre-petition which helped the Debtor stay in business and provided additional time to pay. The Debtor defaulted on the forbearance agreement and then filed a chapter 7 case. Movant asserts the money that it has identified in its motion constitutes proceeds of its security interest and all of the funds the Debtor generated as a general contractor constituted revenues from its business as such.

Movant argues that there is no equity in any of the assets that are subject of this motion and this is a chapter 7 case, with no reorganization. Movant also argues that cause exists to grant relief from stay as it is not being paid and it has the right to take possession of the proceeds of its collateral as a secured creditor.

TRUSTEE'S LIMITED OPPOSITION

The Chapter 7 Trustee, Michael McGranahan, filed a limited opposition to the Motion, generally agreeing with most of the relief sought by Movant.

Accounts Receivable

The Trustee argues that Movant is undersecured unless the accounts receivable have a value in excess of approximately \$610,000.00, and if so, there may be a surplus for the estate. Trustee states he has engaged in a preliminary effort to determine if there is any equity in the Debtor's remaining accounts receivable but the results are not promising. The Trustee states that it is too early tell whether or not equity remains in the accounts for the benefit of the estate, and Trustee is not willing to abandon the potential of recovering surplus collections.

As to the accounts receivable, the Trustee states he is not willing to abandon them, but does not oppose relief from stay to allow Movant an opportunity to attempt collection pursuant to California Commercial Code Section 9607(a)(1). As the Trustee asserts, while relief from stay may be granted, Creditor must account for any amounts in excess of its debt and turn over those excess monies to the Trustee. Additionally, Creditor has the obligation to proceed to collect the accounts receivable and liquidate its collateral in a commercially reasonable manner. Cal. Com. 9610(b). The Creditor is exercising lien rights to sell property of the bankruptcy estate.

Appointment of a Receiver

The Trustee also opposes relief from stay to file a state court action or seek appointment of a receiver in such state court action, as this would have significant unintended consequences, including fixing of Movant's claim and control over estate assets by a receiver not answerable to this court. Trustee states that filing an adversary proceeding would be a better approach.

Relief to Apply \$91,576.85 of Monies

As to the \$91,576.85 of funds in Acct. 7470, the Trustee states Movant has a perfected security interest in the funds and does not oppose this request in general. However, Trustee states any relief granted must specifically direct and authorize Trustee to make the disbursement, and such relief exceeds the relief granted on an ordinary motion for relief from stay.

In its motion Movant indicates an intention to disburse \$65,000 of the \$91,576.85 to Atascadero Glass, and presumably credit the Debtor's loan.

Trustee states there are two problems with this approach. First, a motion for relief from stay is not the procedural vehicle to determine the amount of WestAmerica's claim, or the propriety of credits to such loan balance. Second, unless Atascadero Glass has an interest in the \$65,000, that money should be retained by WestAmerica Bank and applied to Debtor's secured debt. Trustee believes he should be authorized to pay the entire \$91,576.85 to WestAmerica Bank, without any ruling as to whether or not WestAmerica Bank must pay Atascadero Glass, or as to the appropriate amount of credit to the loan balance. However, in fairness, Atascadero Glass, and other creditors, should be given notice of such proposed payment and an opportunity to object. Trustee argues that because notice has not been given to Atascadero Glass or others, the Court should not direct the turnover of the \$91,576.85 at this time.

Relief to Apply \$174,130.31 in Pre-Petition Bank Account

As to the \$174,130.31, the Trustee is satisfied that the Movant has a perfected security interest in these funds and does not oppose the request.

Proceeds From Sale of Equipment

As to the proceeds of the equipment auction, the Trustee states he does not have possession of the proceeds of the auction yet and does not have final figures regarding them. The Trustee intends to seek a surcharge of the proceeds to pay expenses related to the storage and sale of the Movant's collateral, making turnover premature.

The Trustee states he hopes to make progress toward resolving these issues prior to the hearing, but that if an agreement is reached, such agreement would require further notice to creditors and a formal motion by the Trustee.

DISCUSSION

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the asset for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the asset is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

This case presents the court, Trustee, and Creditor with some unusual issues. The case began with a rocky start as neither Creditor nor

the Trustee made provisions for payment of the insurance for the equipment and other personal property in which Creditor asserted a lien and which the Trustee sought to sell at auction. Creditor and the Trustee not having provided for payment of the insurance that protected Creditor's collateral, the court granted relief from the automatic stay to AFCO Acceptance Corporation to allow it to terminate the insurance it had financed and recover the unearned portion of the premiums to avoid further loss. Order, Dckt. 115.

Relief having been granted, Creditor and the Trustee acted to obtain replacement insurance for the collateral and other personal property pending the Trustee conducting the court approved auction sale. On November 9, 2013, AFCO Acceptance Corporation filed a Motion for Allowance of an administrative expense in the amount of \$37,980.58 for the post-petition premiums for the insurance prior to the September 30, 2013 cancellation.

Though the AFCO Acceptance motion for relief from the automatic stay states that the insurance cost is \$459.19 per day. For the period of July 16, 2013 (date Petition was filed) through September 30, 2013 (76 days), this totals \$34,898.44. While the court does not opine whether this is the amount of any administrative expense, the magnitude of the expense is not a surprise.

When a proposed settlement for setting a surcharge pursuant to 11 U.S.C. § 506(c) fell through in light of the AFCO Acceptance motion for an administrative expense, the present motion was filed. The Trustee indicates in his opposition that discussions between Westamerica Bank and the Trustee are ongoing, but there is no indication that this motion for relief from the stay has been resolved.

The court shall issue a minute order terminating and vacating the automatic stay to allow Westamerica Bank, and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset described as,

1. Pre-petition accounts receivable pledged by the Debtor to secure the claim of Westamerica Bank, not otherwise provided for in this order;
2. \$91,576.85+/- of funds in Acct. 7470;
3. \$174,000+/- of funds in Acct. 854-4 (Fresno Irrigation District Project); and
4. Equipment subject to Creditor's lien which has not been sold by the Chapter 7 Trustee,

under its security agreement, loan documents granting it a lien in the asset and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

The court denies the request for injunctive relief ordering the Trustee to turn over possession of personal property and monies. The court

is confident that the Chapter 7 Trustee can responsibly address Westamerica Bank's lien rights and contract rights to take possession of the collateral. The Trustee is not expected to do Westamerica Bank's job to assemble and organize the collateral for this creditor.

The court denies the request for relief from the automatic stay to commence a separate state court action for the appointment of a receiver to collect the accounts receivable. If Westamerica Bank believes that it needs a receiver to enforce its rights to collect the accounts receivable, this court may appoint an equity receiver under applicable State law. Commencing a separate state court action would cause otherwise unnecessary expense for Westamerica Bank and subject the Trustee and estate to other forum judicial proceedings at a time Westamerica Bank has all of the monies of the estate tied up. The bankruptcy trustee serves as an officer of the bankruptcy court and is subject to the orders and rulings of this court.

The court denies the request for the immediate possession of the auction sale proceeds. Though a stipulated surcharge pursuant to 11 U.S.C. § 506(a) is not now before the court, it does not appear unusual or unexpected that Westamerica Bank having used time and resources of the estate to have its collateral sold, a surcharge may be granted. As with the AFCO Acceptance financing of the insurance proceeds, Westamerica Bank cannot expect both AFCO Acceptance and the Trustee to provide for free insurance and liquidation services. See AFCO Acceptance Motion for Relief Civil Minutes, Dckt. 110.

The Trustee has indicated that he would not oppose a receiver appointed by, and subject to, the jurisdiction of this federal court. While the Trustee has suggested that Westamerica Bank commence an adversary proceeding for the appointment of a receiver, the parties may stipulate to seek such relief as a Contested Matter (Fed. R. Bank. P. 9014). Given that the common practice is to dismiss a state court action for the appointment of a receiver after the receiver's tasks are completed when the creditor is not seeking a judgment, a Contested Matter may cost effectively obtained for Westamerica Bank the assistance it needs.

All other relief requested in the Motion is denied.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Westamerica Bank, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as,

1. Pre-petition accounts receivable pledged by the Debtor to secure the claim of Westamerica Bank, not otherwise provided for in this order;
2. \$91,576.85+/- of funds in Acct. 7470;
3. \$174,000+/- of funds in Acct. 854-4 (Fresno Irrigation District Project); and
4. Equipment subject to Creditor's lien which has not been sold by the Chapter 7 Trustee,

and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that the granting of relief does not include the commencement of any non-bankruptcy court actions to seek the appointment of a receiver or any other relief against the property of the bankruptcy estate.

No other or additional relief is granted.

3. [13-91315](#)-E-7 APPLEGATE JOHNSTON, INC. MOTION FOR RELIEF FROM
LW-2 George C. Hollister AUTOMATIC STAY
10-30-13 [[270](#)]

THE GUARANTEE COMPANY OF
NORTH AMERICA, USA VS.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 30, 2013. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

Final Ruling: The Motion for Relief from Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to continue the hearing on the Motion for Relief from Automatic Stay to 10:00 a.m. on December 19, 2013, as requested by Movant. No appearance at the November 21, 2013 hearing is required.

The Guarantee Company of North America ("Movant") moves for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2) to complete one of Debtor's projects and to apply the remaining contract balance to satisfy the Debtor's contractual obligations.

Debtor entered into a construction contract with the City of San Jose to construct a fire station. Movant, the surety, issues a performance bond in the sum of \$4,008,500 on behalf of the Debtor naming the City as the obligee. Under the terms of the bond, the Debtor and Movant bound themselves, jointly and severally, to the City to truly and faithfully perform all duties, undertakings, covenants, terms, and conditions of the contract. The parties entered into a Indemnity Agreement, in which the Debtor agreed to indemnify the surety and hold it harmless from and against all claims, damages, losses, costs, and expenses of every nature which the surety may sustain, incur, or become liable for by reason of having executed the bond. In addition, the Debtor expressly assigned all bonded contract proceeds to the surety as collateral security.

The City asserts that the Debtor has defaulted on the project and acknowledges a contract balance on the project of \$605,959.04, but alleges an offset of \$944,566.00 for the cost of correcting allegedly non-conforming work, liquidated damages of \$765,000.00, and claims from subcontractors and suppliers totaling \$788,383.43. Based on the City's allegations and the obligations of the Surety under the Bond, the Surety's potential loss exceeds \$2,000,000.

Movant requests relief from the automatic stay to enable it to enter into an agreement with the City for completion of the project and/or to undertake other efforts to complete the project and correct any

non-conforming work. Movant also seeks relief from the automatic stay to apply the contract balance to the cost of completing and/or correcting the Debtor's work, paying subcontractors and suppliers, and satisfying liquidated damages.

Movant argues that under 11 U.S.C. § 362(d)(2) the contract balance is not necessary to an effective reorganization, as this is a Chapter 7 liquidation. Movant argues the Debtor lacks equity in the contract balance because the doctrine of equitable subrogation as set forth in *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 136-37 (1962) allows the surety to stand in the position of the City and off-set the contract balance against damages incurred by the Debtor under the contract. Additionally, Movant states the Debtor expressly pledged the contract balance to the Surety in the Indemnity Agreement and, hence, it never became property of the estate.

CONTINUANCE

On November 20, 2013, Movant requested that the hearing be continued due to unavailability of counsel. This motion was filed pursuant to Local Bankruptcy Rule 9014-1(f)(2), for which no written opposition was required. The court grants Movant's request of the continue the (f)(2) hearing on the Motion to December 19, 2013.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to 10:00 a.m. on December 19, 2013.

4. [13-91315](#)-E-7 APPLEGATE JOHNSTON, INC.
VVF-2 George C. Hollister

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-22-13 [[217](#)]

AMERICAN HONDA FINANCE
CORPORATION VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 22, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

American Honda Finance Corporation seeks relief from the automatic stay with respect to an asset identified as a 2011 Honda Civic, VIN ending in 1155. The moving party has provided the Declaration of Magda Bello to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Bello Declaration states that the Debtor has not made three (3) post-petition payments, with a total of \$940.53 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$11,155.84, as stated in the Bello Declaration.

The Bello Declaration also seeks to introduce evidence establishing the value of the asset is \$10,225.00. Movant provides a *N.A.D.A. Official Used Car Guide* valuation.

The Chapter 7 Trustee filed a statement of non-opposition, stating that he has affirmatively moved to abandon the collateral. Dckt. 281.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the asset for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the asset is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow American Honda Finance Corporation and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has plead adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow American Honda Finance Corporation, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Honda Civic, VIN ending in 1155 and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

No other or additional relief is granted.

AMERICAN HONDA FINANCE
CORPORATION VS.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 22, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

The Bello Declaration states that the Debtor has not made three (3) post-petition payments, with a total of \$940.53 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$11,155.58, as stated in the Bello Declaration.

The Bello Declaration also seeks to introduce evidence establishing the value of the asset is \$10,225.00. Movant provides a *N.A.D.A. Official Used Car Guide* valuation.

The Chapter 7 Trustee filed a statement of non-opposition, stating that he has affirmatively moved to abandon the collateral. Dckt. 283.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the asset for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the asset is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow American Honda Finance Corporation and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has plead adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow American Honda Finance Corporation, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective

agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Honda Civic, VIN ending in 1121 and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

6. [13-91315](#)-E-7 APPLEGATE JOHNSTON, INC. MOTION FOR RELIEF FROM
VVF-4 George C. Hollister AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-22-13 [[231](#)]

AMERICAN HONDA FINANCE
CORPORATION VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 22, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

American Honda Finance Corporation seeks relief from the automatic stay with respect to an asset identified as a 2011 Honda Civic, VIN ending in 8837. The moving party has provided the Declaration of Magda Bello to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Bello Declaration states that the Debtor has not made three (3) post-petition payments, with a total of \$940.53 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$11,155.84, as stated in the Bello Declaration.

The Bello Declaration also seeks to introduce evidence establishing the value of the asset is \$10,225.00. Movant provides a *N.A.D.A. Official Used Car Guide* valuation.

The Chapter 7 Trustee filed a statement of non-opposition, stating that he has affirmatively moved to abandon the collateral. Dckt. 285.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the asset for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the asset is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow American Honda Finance Corporation and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has plead adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow American Honda Finance Corporation, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Honda Civic, VIN ending in 8837 and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

7. 13-90935-E-12 ARTURO/RAMONA ROMERO
MHK-1 Hagop T. Bedoyan

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
8-27-13 [49]

AMERICAN EQUITY SERVICE,
INC. VS.

CONT. FROM 10-31-13, 9-26-13

Local Rule 9014-1(f)(1) Motion - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

American Equity Service, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6955 Faith Home Road, Ceres, California. The moving party has provided the Declaration of Devra Riggs to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Movant contends that cause exists for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). The Riggs Declaration states that the Debtor failed to perform as agreed under the terms of their loan and Debtors have cancelled their insurance eight different times requiring the Movant to obtain placing force-placed insurance on the property, seven forbearance agreements have been negotiated, four formal loan modification have been executed, five notices of default entered. AES opines that the current value of the property is \$1,400,000, when the debtor lists the current value of the property at \$2,120,000 in their schedules. AES is owed \$1,081,630.80.

Movant argues that the Debtors past economic performance both before and after the loan shows Debtors will once again default on their obligations. Movant argues that the Debtors will be in their mid 90's when the loan becomes due under the plan and that most of the AES investors are elderly and unlikely to see the performance of the loan.

Movant states several plan objections, stating the proposed interest rate is too low, the plan treatment purports to amortize the claim over 30 years, but the plan treatment is inconsistent. Movant is not sure where the annual payment to AES will come from.

OPPOSITION

Debtors argues that the motion must be denied because a substantial equity cushion exists in the property to protect Movant's interest, well over 11.45 percent. Debtors state that the property is also currently covered by insurance. Debtors argue that there is not sufficient cause to lift the automatic stay.

STIPULATION

The parties filed a Stipulation to continue the hearing and Debtors agreed to provides AES with the following adequate protection:

(1) Debtors will provide AES with an accounting of the 2013 cherry crop and crop proceeds on or before October 24, 2013, and;

(2) Debtors will pay the net proceeds of the 2013 cherry crop, not to be less than \$8,000.00 to AES on or before October 10, 2013, to be applied to the outstanding debt owed to AES.

Movant filed a Notice of Compliance, stating Debtors complied with the Stipulation and provided AES with a check in the amount of \$8,048.28 and the 2013 cherry crop accounting from the packer.

CONTINUANCE

At the continued hearing Debtors-in-Possession stated that they would file an amended plan which addresses the objections and is confirmable. The court continued the hearing in order for the court to consider the motion in light of the amended plan.

A review of the court docket shows that an amended plan was filed on November 15, 2013. Movant is provided in Class 2, to be paid in full from the proceeds from the sale of the real property on or before August 1, 2014. The claim will accrue interest at the rate of 5% and Debtors provide several benchmarks for completing the sale:

a. On or before November 21, 2013, the Debtors will enter a binding contract to sell the Real Property to Gloria Romero and Bernadetta and Carlos Estacio or their nominee ("Buyers"). The purchase and sale agreement ("the PSA") will provide for the close of escrow within 90-days of the date that the PSA is signed by the parties ("Plan A"). The parties will use commercially reasonable efforts to close escrow as soon as practicable.

b. If escrow has not closed within 90-days of the date that the PSA is signed, the Debtors will immediately list the Real Property with a qualified real estate broker.

c. The Debtors will accept an offer to purchase the Real Property and open escrow on or before June 1, 2014 ("Plan B").

d. The Plan B escrow will close on or before August 1, 2014, and AES will be paid in full from the proceeds received from the sale of the Real Property.

e. AES will calculate its payoff demand based on an interest rate of rate of 5% per annum from and after the Effective Date of the Plan.

f. The Debtors will pay the property taxes pertaining to the Real Property as they come due pending the sale of the Real Property.

Based on a review of the proposed Chapter 12 plan, the court denies the motion for relief from stay without prejudice. Movant has not provided enough to show that cause does not exist to grant relief from stay at this time in light of the amended plan.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of

the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for relief from the automatic stay is denied without prejudice.

8. 13-91262-E-7 **ROBERT ADAMS** **MOTION FOR RELIEF FROM**
 ASW-2 Pro Se **AUTOMATIC STAY**
 10-21-13 [[48](#)]

FEDERAL NATIONAL MORTGAGE
ASSOCIATION VS.

DISCHARGED 11-7-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on October 21, 2013. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Federal National Association seeks relief from the automatic stay with respect to the real property commonly known as 13519 Skyline Boulevard Waterford, California. The moving party has provided the Declaration of Renae Murray to introduce evidence which establishes that the Debtor is no longer the owner of the property, movant having purchased the property at a pre-petition Trustee's Sale on April 22, 2013. Debtor is a tenant at sufferance.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter

7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Debtor filed an opposition, stating he would provide facts and evidence in support of his opposition at the hearing.

The Debtor was granted a discharge on November 7, 2013. Granting of a discharge to an individual under Chapter 7 terminates the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Federal National Association, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 13519 Skyline Boulevard Waterford, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Federal National Association and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 13519 Skyline Boulevard Waterford, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor(s), who have been granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

9. [12-92779-E-7](#) LARRY MOSS
PD-1 Martha Lynn Passalacqua

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-4-13 [[56](#)]

UNION BANK, N.A. VS.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee and Office of the United States Trustee on November 4, 2013. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Union Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 1305 Victoria Drive, Modesto, California. The moving party has provided the Declaration of Jody C. Curry to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Curry Declaration states that the Debtor has not made eleven (11) post-petition payments, with a total of \$6,953.54 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$214,709.23 (including \$111,505.90 secured by movant's first trust deed), as stated in the Curry Declaration, while the value of the property is determined to be \$53,200.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839

(B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Union Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has plead adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Union Bank, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1305 Victoria Drive, Modesto, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

10. [13-91579-E-7](#) **WILLIAM/TERRI FOULDS** **MOTION FOR RELIEF FROM**
MBB-1 **David C. Johnston** **AUTOMATIC STAY**
10-7-13 [[23](#)]
BANK OF AMERICA, N.A. VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 7, 2013. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Bank of America, N.A. seeks relief from the automatic stay with respect to an asset identified as a 2007 Malibu Wakesetter 23 L, VIN ending in D707; 2007 DHM Trailer, VIN ending 0764. The moving party has provided the Declaration of Teresa Haith to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Haith Declaration states that the Debtor has not made one (1) post-petition payments, with a total of \$375.58 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$45,596.86, as stated in the Haith Declaration.

The Haith Declaration also seeks to introduce evidence establishing the value of the assets is \$38,035. Though the *N.A.D.A. Official Used Car Guide* valuation is attached as an Exhibit, it is not properly authenticated.

The court will *sua sponte* take notice that the *N.A.D.A. Official Used Car Guide* can be within the "Market reports, commercial publications" exception to the Hearsay Rule, Fed. R. Evid. 803(17), it does not resolve the authentication requirement, Fed. R. Evid. 901. In this case, and because no opposition has been asserted by the Debtor, the court will presume the Declaration of Haith to be that she obtained the *N.A.D.A. Official Used Car Guide* valuation and is providing that to the court under penalty of perjury. The creditor and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the asset for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the asset is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Bank of America, N.A. and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Bank of America, N.A., its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2007 Malibu Wakesetter 23 L; 2007 DHM Trailer and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

No other or additional relief is granted.

11. [13-90382](#)-E-7 MICHAEL CARSON MOTION FOR RELIEF FROM
VVF-1 Robert D. Rodriguez AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
11-7-13 [63]

AMERICAN HONDA FINANCE
CORPORATION VS.

DISCHARGED 6-18-13

Local Rule 9014-1 (f) (2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 7, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling

becomes its final ruling, the court will make the following findings of fact and conclusions of law:

American Honda Finance Corporation seeks relief from the automatic stay with respect to an asset identified as a 2011 Honda Motorcycle, VIN ending in 0064. The moving party has provided the Declaration of Amber Bowens to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Bowens Declaration states that the Debtor has not made three (3) post-petition payments, with a total of \$738.78 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$8,211.95, as stated in the Bowens Declaration.

The Bowens Declaration also seeks to introduce evidence establishing the value of the asset is \$6,750.00. Movant provides a *N.A.D.A. Official Used Car Guide* valuation.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the asset for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the asset is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The Debtor was granted a discharge on June 18, 2013. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow American Honda Finance Corporation, and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has plead adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow American Honda Finance Corporation, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Honda Motorcycle, VIN ending in 0064 and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

12. [13-91882-E-7](#) **GEORGE PRICE**
DBB-1 **Michael R. Germain**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-6-13 [[10](#)]**

JAMES LA HERRAN VS.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 5, 2013. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Movant James La Herran seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), alleging that cause exists to allow him to continue litigation in State Court for personal injuries and property losses suffered as a result of the negligence of Debtor. The case is in Tuolumne County Court Case No. CV57933, set for trial June 2, 2014. Movant states that he is willing to limit his recovery against the Debtor to the policy limits of Defendant's insurance such that he will only be seeking to recover from a non-debtor, Debtor's insurance company.

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The basis for such relief when there is pending litigation in another forum is predicated on factors of judicial economy including whether the suit involves multiple parties or is ready for trial. See *Packerland Packing Co., Inc. v. Griffith Brokerage Co. (In re S. Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Santa Clara County Fair Ass'n, Inc. v. Sanders (In re Santa Clara County Fair Ass'n, Inc.)*, 180 B.R. 564 (9th Cir.

BAP 1995); *Truebro, Inc. v. Plumberex Specialty Products, Inc. (In re Plumberex Specialty Products, Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the state court personal injury case warrants relief from stay for cause. It appears the case has undergone discovery and is set for trial. Further, Movant contends that he will only be seeking to recover from a non-debtor, Debtor's insurance company.

The court shall issue a minute order modifying the automatic stay as it applies to the Debtor, to allow James La Herran to continue the state court case.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are modified to allow James La Herran, his agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to continue Tuolumne County Court Case No. CV57933 to final judgment.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to the enforcement of the judgment against the Debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted.